IN THE

Supreme Court of the United States

No. 525

ORIN C. CLEMENT,

Petitioner,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF HOUSING EXPEDITER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORIN C. CLEMENT,
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Toledo, Ohio.

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PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

I

Contrary to respondent's contention that "the main question before the District Court was one of fact, *viz.*, were the alleged contracts of sale employed by petitioner merely a device to evade the maximum rent provisions of the Act and the Regulations," the question before the trial court was one of mixed law and fact—undisputed facts. *Bell vs. Porter,* 159 F. 2d, 117, cert den. 330 U. S., 817; *Becker vs. Loew's, Inc.,* 133 F. 2d., 889, cert. den. 319 U. S., 772.

Here is involved a written contract, a valid, subsisting contract for the sale of an interest in real estate, containing provisions of complete integration, unattacked for fraud, accident or mistake, establishing under the laws of Ohio a certain relationship between the contracting parties, into which relationship the respondent intrudes himself without any authority for so doing, in the absence of some direct, relevant, and substantial proof of the existence of another or side agreement being the real contract. The record reveals no such side agreement or any intimation of such, even from the mouths of the contracting parties who testified, and who would be expected to reveal such if any existed.

When a District Court undertakes to determine the existence or validity of an alleged contract, whether in findings of fact or conclusions of law, it makes a legal determination which the Court of Appeals is competent to make, and may make, notwithstanding Rule 52(a). *Bach vs. Friden Calculating Machine Co.*, 155 F. 2d., 361, 364.

The facts here are not in dispute and are largely documentary. The Appellate Court is as able as the trial court to draw inferences and conclusions, and is not bound to accept findings of the trial court. *U. S. vs. So. Georgia Ry. Co.*, 107 F. 2d., 3; *Stubbs vs. Fulton National Bank of Atlanta*, 146 F. 2d., 558, cert. den. 325 U. S., 864; *In re Chicago & Northwestern Ry.*, 110 F. 2d., 425; *Hummel Bros. Co. vs. Serrick Corporation*, 122 F. 2d., 470.

Documentary construction and consideration is herein involved, and it was the duty of the Appellate Court to study the evidence and ascertain whether it was of *quantum* and persuasiveness required, and resolve the question of law presented. *Chain O'Mines vs. United Gilpin Corporation*, 109 F. 2d., 617, cert den. 311 U. S., 659; *Chatz vs. Armour Plant Emp. Credit Union*, 154 F. 2d., 236, cert. den.

329 U. S., 728; *Harris Stanley Coal & Land Co. vs. Chesapeake & Ohio Ry.*, 154 F. 2d., 450, cert. den. 329 U. S., 761; *Sun Insurance Office, Ltd. vs. Be-Mac Trans. Co.*, 132 F. 2d., 535.

"* * * Where the ultimate finding is a conclusion of law, or a determination of a mixed question of law and fact, it is subject to judicial review, and the duty of the Circuit Court of Appeals is to provide a real review." *Becker vs. Loew's, Inc., supra.*

The petition filed herein, and the record (R. pp. 74, 75), discloses petitioner's challenge to the findings of fact by the trial court and the erroneous view of the law adopted and applied by the trial court in reaching the decision complained of. The substance of the evidence, which is largely irrelevant and incompetent as being offered to vary the legal effect of written contracts, is clearly lacking in probity and wholly insufficient to support the findings of ultimate facts, and is based upon a misconception of the applicable law. These are root factors which the Court of Appeals was, in law, required to examine and resolve—a duty when that challenge is made—but which that court refused to accept and resolve, on the erroneous view of the law that by Rule 52(a) of the Rules of Civil Procedure the review court would not consider the merits. The Circuit Court of Appeals completely overlooked the rule of law that where the evidentiary facts are not in dispute, and there is documentary construction involved, bringing in a question of law, Rule 52(a) has no application, since the Appellate Court is just as able as a trial court to form its inferences and conclusions. The findings having been challenged, it was the duty of the Appellate Court to afford petitioner a real examination and review.

Failing in its duty in these respects, by its summary and perfunctory treatment of petitioner's appeal in the

Appellate Court, and ignoring the law's requirement for a careful and considered appraisal of the evidence, respondent cannot, petitioner submits, very cogently contend that the concurrence of the two lower courts in the findings cannot be here assailed. It is true that concurrent findings by a District Court and by a Circuit Court of Appeals will receive great weight, especially when the evidentiary facts have received a careful examination but "the rule that concurrent findings of the two lower courts are persuasive in support of their judgments does not relieve this court of the task of examining the foundation of findings in particular cases," and "cannot be deemed unreviewable 'finding of fact,' " for "though labelled 'finding of fact,' it may involve the very basis on which judgment of fallible evidence is to be made. Thus, the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of 'fact' that precludes consideration by this court." *Baumgartner vs. United States,* 322 U. S., 665, 670, 671.

There is here no disagreement over the evidentiary facts, irrelevant and incompetent though much of it may be, but there is a sharp difference of view as to the import of the evidence and its reliability in arriving at the ultimate facts and conclusions of evasion. This involves the departure of the trial court from the accepted and usual course of judicial procedure, in basing the finding and decision on the law pertaining to evictions, in an action which is predicated upon evasion, when, as the record shows, there were no evictions; admitting testimony of the contracting parties to vary the terms and legal effect of completely integrated instruments; and constitutional rights respecting contracts for, and the disposition of, property. These are important and far reaching issues, and "when we deal with issues such as these before us, facts and their constitutional significance are too closely connected to make the

two-court rule a serviceable guide." *United States vs. Appalachian Power Co.*, 311 U. S., 377, 404.

Manifestly then, the finality of respondent's 'short' answer, that the finding concurred in by two courts "will be accepted here without examination of the evidence," and that therefore the trial court's finding of a landlord-tenant relationship is not reviewable by this court, finds no support in law or in reason. In this connection, in view of respondent's contention respecting the finality of concurrent findings of two courts, it is interesting to note that, in both the above cases cited by petitioner, this court not only re-examined the evidence and arrived at different findings and conclusions, but, at the same time, reversed in each instance the two courts. Obviously, the extreme view of respondent is not supported in law as a general rule. It doubtless has application in certain particular cases.

II

Petitioner readily concedes that, within the scope of the authority granted, the meaning and application of the Housing and Rent Act and Regulations, in fact all Acts of Congress, are controlled by federal law. That is the supreme law of the land. That is elementary.

But the state law creates legal rights and legal interests, that is, the legal status and relationship of the parties, controls the acquisition and disposition of real estate and any interest therein, the modes of conveying and encumbering it, and the burdens to be imposed upon it, within, of course, constitutional guaranties. *Arndt vs. Griggs*, 134 United States, 316, 320, 321; *Credit Finance Corporation vs. Hale & Perry, Inc.*, 66 F. 2d., 357.

The Congress only acts upon or legislates concerning that status, right, or relationship as it is found or exists, but cannot enlarge upon or construe that right or status

into something different. The substance and the actuality cannot be altered to bring it within the scope of the enactment.

Respondent fails to distinguish between the right of interpretation, on the one hand, and the scope of the authority granted, on the other hand. One is the right of judicial action, and the other is the denial of that right.

As applied in particular in the field of federal income taxes, this distinction is made clear. The federal law controls in determining if the status or thing created by state law is the status or thing intended to be acted upon, no matter what that thing or status may be called, as long as the substance is there. *Morgan vs. Commissioners,* 309 U. S., 78.

But the state law governs in determining those rights, the status and relationship created, to see if it is the status or thing intended to be acted upon. *Crooks vs. Harrelson,* 282 U. S., 55; *Poe vs. Seaborn,* 282 U. S., 101.

Clearly, the federal law cannot arbitrarily, or otherwise, fix or find the status of these contracts or the relationship and rights created thereunder different from what the Ohio law establishes that status and the rights thereunder to be. That would be creating rights, and in that field the Ohio law is supreme.

Applicable in this connection, though conversely stated, is the observation of the court in *Crooks vs. Harrelson, supra,* (p. 60):

> "Courts have sometimes exercised a high degree of ingenuity, in the effort to find justification for wrenching from the words of the statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of judicial power and that of the legislative power as

to call rather for great caution and circumspection in order to avoid usurpation of the latter."

Manifestly, there is no support in law for respondent's contention that "the District Court could properly find that these agreements were sham, not consummated in good faith, and constitute an evasion of the federal Act, even though they were technically valid under the state law," since these contracts of sale establish a certain relationship, equitable ownership in the vendees (*Credit Finance Corp. vs. Hale & Perry, Inc., supra*), with equitable remedies created in both parties. That status is fixed by the Ohio law, and though Congress may enact legislation, within constitutional guaranties, affecting that status or relationship, it must give way to the legality of that status thus established by the local law. Any finding by the trial court of sham or lack of good faith is clearly erroneous in invading the exclusive field of the state created rights.

This is not saying that the court could not find from the substance, the subject matter of the instrument itself, that it is not a contract for the sale of an interest in land because it did not contain the necessary legal requirements and elements for such a contract, or that it was not the real contract—the evidence showing another side agreement being the true contract. But petitioner does insist that, in an action predicated upon an evasion in the execution of these contracts, the pretended claims of sham and lack of good faith are wholly at variance and inconsistent with the rights created by state law. In such an action, good faith, purpose, and motive are not involved or material. The question is, is it a legal instrument, does it create a legal status—and by the state law.

III

Respondent here concedes that petitioner "could sell his accommodations after the tenants in occupancy had vacated" on notices of the withdrawal of the units from the rental market. Lawful possession of the accommodations, then, being in petitioner, precludes any question of the right of possession under Sec. 209 or the application of a good faith requirement for possession thereunder.

This manifestly concedes the error of the trial court's conclusion, that there were evictions in violation of Sec. 209 (R. pp. 16, 60) and that *Woods vs. Burg,* 82 F. Supp. 242 was authority for a finding of lack of good faith, when there was no question of good faith before the court to which the statutory provision of good faith could apply. Respondent cannot concede the right of possession to sell without, at the same time, conceding that Sec. 209, with its provision of good faith, and *Woods vs. Burg, supra,* are wholly inapplicable in this action, based on evasion, and that the finding of the lack of good faith is a clearly erroneous application of the law.

In view of this clear and admitted misapplication of a provision of law respecting evictions, to support a finding of evasion, it is an extreme and distorted claim to urge or pretend that these contracts of sale were a re-offering of the accommodations upon the rental market, and a re-renting, when in law they create definite and established legal and equitable rights in real estate.

The finding of the trial court concurred in by the Court of Appeals, without a real examination and review of the issue involved, a mixed question of law and fact, cannot preclude the consideration of this cause by this court.

IV

Respondent seems to be in confusion regarding petitioner's contention respecting Section 209 of the Act of 947, as amended in 1948.

Petitioner has no thought that this action was brought nder Sec. 209 or involves any eviction proceedings, but in complete agreement with respondent that this action brought under Sec. 206(b) of the Housing and Rent Act 1947, as amended in 1948, (Public Law 464), as alleged the complaint (R. p. 2), and is to restrain the petitioner om demanding or receiving more than the established aximum rent. What petitioner does contend is that Sec. 9 has no relevancy or bearing upon the issue of evasion this cause, and is here erroneously considered because spondent injected its consideration into the cause by king for the temporary injunction on the authority of, and ing to the trial court at the time of the hearing. *Woods Burg, supra.* The trial court granted the temporary junction on the authority of *Woods vs. Burg* (R. p. 60) ough no eviction or action or proceeding for possession s involved.

This was clearly erroneous and a clear misapplication the law to the facts. Evasion by these contracts is the e issue, to which issues good faith, motive, or purpose wholly irrelevant.

This action was filed March 25, 1948, (R. p. 60), and acts and occurrences transpired while the Act of 1947, amended in 1948, was in force and effect. The amendnt in 1949 took effect April 1, 1949, and has no bearing effect upon the issue in this cause.

V

Here, again, we meet respondent's extreme and untenable position that the findings of the court, that these contracts of sale constitute rentals, are final. Naturally, of course, if these contracts were merely rentals, these accommodations would be subject to the Act. That is too well established by now to need the citation of authority, but that is beside the question here.

Petitioner challenges the findings, and asserts that they are made on an erroneous apprehension of the law to the facts, and are not supported by substantial evidence, and are made in an action predicated on evasion, on the law applicable to actions for possession of rental accommodations, with no consideration given to the applicable law pertaining to evasion, and asserts that this is a radical departure from usual judicial procedure.

These findings prevent petitioner from disposing of his property in the manner he desires. If these findings are erroneous, as petitioner claims, he has then been denied his constitutional right to dispose of his property. It is to test these findings in the light of applicable law, and to determine what law is applicable, that this review is requested.

As brought out under heading "I" herein, that presents a reviewable question which entitled petitioner to a real examination and review by the Court of Appeals, which he did not receive for reasons similar to the reasons respondent now urges why this Court should not grant a review.

CONCLUSION

Whether the decision of the court below is right is the question petitioner seeks reviewed. That is the question for the court. It is hard to think of a question of

more importance than one involving the right to sell housing accommodations or other controlled housing by contract. The court will take judicial knowledge of the fact that thousands of all classes and types of properties are sold by land contract, and many of these contracts may be involved in court actions at the instance of the vendors or vendees, or perhaps this respondent, as in the instant cause. The precedent set by the law finally made in this cause is manifestly of great importance, if not to the respondent, certainly to those who may be affected by this decision.

Furthermore, the decision as it now stands is in sharp conflict with *Denning & Company vs. Fleming,* 160 F. 2d., 697 (C. C. A. 10), as well as *Woods vs. White,* 172 F. 2d., 356 (C. C. A. 2). The decision has the effect of conflicting with the Parole Evidence Rule, against the introduction of oral testimony to vary the legal effect of a written instrument. Had this rule been observed, the trial court's consideration would not have been diverted to the question of good faith in connection with eviction cases under Sec. 209, interpreted in *Woods vs. Burg, supra,* and relied upon by the court, but would have been confined to the single issue of evasion and a consideration of these contracts in that connection under applicable law. For these reasons, petitioner is entitled to a re-examination and review, and therefore the petition for a writ of *certiorari* to the United States Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

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